

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary K. Michelson, M.D.

Serial No: (Div. of 10/094,467)

Filed: November 20, 2003

For: EXPANDABLE INTERBODY SPINAL  
FUSION IMPLANT WITH EXPANSION  
CONSTRAINING MEMBER AND METHOD  
FOR USE THEREOF

Prior Application Information:

Group Art Unit: 3732

Examiner: P. Philogene



MS PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**CONTINUING APPLICATION TRANSMITTAL**

Transmitted herewith for filing is a ☐ Continuation ☒ Divisional ☐ Continuation-In-Part application under 37 C.F.R. § 1.53(b) of prior patent application No. 10/094,467, filed March 8, 2002.

- ☐ Applicant claims small entity status under 37 C.F.R. §§ 1.9 and 1.27.
- ☒ 24 total application pages including specification, claims (41 total and 3 independent), and abstract are enclosed.
- ☐ A newly executed Declaration and Power of Attorney ☐ is enclosed ☐ will follow.
- ☒ A copy of the Declaration and Power of Attorney from the prior application is enclosed.
- The entire disclosure of the prior application, from which an oath or declaration is supplied, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.
- ☒ 7 sheets of formal drawings (A4 paper; Figs. 1-17) are enclosed.
- ☐ The prior application is assigned of record to: \_\_\_\_\_.
- ☒ The power of attorney in the prior application is to at least one of the following: MARTIN & FERRARO, LLP; Thomas H. Martin, Reg. No. 34,383; Amedeo F. Ferraro, Reg. No. 37,129; and Todd M. Martin, Reg. No. 42,844.
- ☒ The power appears in the original Declaration of the prior application.
- ☐ Since the power does not appear in the original Declaration, a copy of the power in the prior application is enclosed.
- ☐ A certified copy of \_\_\_\_\_ Patent Application No. \_\_\_\_\_ filed \_\_\_\_\_ from which priority is claimed under 35 U.S.C. § 119 is enclosed.
- ☒ Information Disclosure Statement (IDS) with Form PTO-1449 is enclosed.
- ☐ Amend the specification by rewriting paragraph 1 on page 1 to read as follows:  
--This is a ☐ continuation ☐ divisional of application Serial No. \_\_\_\_\_, filed \_\_\_\_\_, and claims benefit of U.S. Provisional application No. \_\_\_\_\_, filed \_\_\_\_\_, all of which are incorporated herein by reference.--.

- ☐ Cancel Claims \_\_\_\_\_.
- ☐ An Amendment is enclosed.

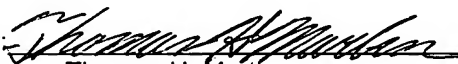
| CALCULATION OF FEES |  |                     |     |                         |  |      |             |
|---------------------|--|---------------------|-----|-------------------------|--|------|-------------|
| ITEM                |  | TOTAL NO. OF CLAIMS |     | NO. OF CLAIMS OVER BASE | LG/SM \$ ENTITY FEE                                  |      | \$ FEE      |
| A                   | TOTAL CLAIMS FEE   | 41                  | -20 | 21                      | LG=\$18<br>SM=\$9                                    | \$18 | 378.00      |
| B                   | INDEPENDENT CLAIMS FEE*  | 3                   | -3  | 0                       | LG=\$86<br>SM=\$43                                   | \$86 | -0-         |
| C                   | SUBTOTAL - ADDITIONAL CLAIMS FEE (ADD FINAL COLUMN IN LINES A + B) |                     |     |                         |  |      | \$ 378.00   |
| D                   | MULTIPLE-DEPENDENT CLAIMS FEE                                      |                     |     |                         | LARGE ENTITY FEE = \$290<br>SMALL ENTITY FEE = \$145 |      | \$ -0-      |
| E                   | BASIC FEE  |                     |     |                         | LARGE ENTITY FEE = \$770<br>SMALL ENTITY FEE = \$385 |      | \$ 770.00   |
| F                   | TOTAL FILING FEE (ADD TOTALS FOR LINES C, D, AND E)                |                     |     |                         |  |      | \$ 1,148.00 |

- ☒ A fee in the amount of \$1,148.00 to cover the above fees is to be charged to Deposit Account No. 50-1066.
- ☒ Correspondence Address: Customer No. 22882  
Martin & Ferraro, LLP  
1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030
- ☒ The Commissioner is hereby authorized to charge any deficiency for the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-1066. **A copy of this sheet is enclosed.**
- ☒ Any additional filing fees required under 37 C.F.R. § 1.16
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

**PETITION FOR EXTENSION.** If any extension of time is necessary for the filing of this application, including any extension in the parent application, Serial No. 10/094,467, filed March 8, 2002, for the purpose of maintaining copendency between the parent application and this application, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to our Deposit Account No. 50-1066. A duplicate copy of this paper is enclosed for use in charging the deposit account.

Respectfully submitted,  
MARTIN & FERRARO LLP

Date: November 20, 2003

By:   
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
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Gary K. Michelson, M.D. )  
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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**CERTIFICATE OF MAILING VIA U.S. EXPRESS MAIL**

Express Mail Mailing Label No. ET692326360US

Date of Deposit: November 20, 2003

I hereby certify that:

1. Continuation Application Transmittal Form (in duplicate; \$1,148.00 filing fee charged to Deposit Account No. 50-1066)
2. 24 total application pages including specification, claims (41 total and 3 independent), and abstract
3. Copy of Declaration and Power of Attorney from prior application
4. 7 sheets of formal drawings (A4 paper; Figs. 1-17)
5. Information Disclosure Statement with Form PTO-1449
6. Self-addressed return postcard receipt

are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service with sufficient postage under 37 C.F.R. § 1.10 on the date indicated above and are addressed to:

MS PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Date: November 20, 2003

  
Sandra L. Blackmon

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